IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 19371 of 2003

Between:

K. Muthyalarao, S/o. Ammanna, APSRTC, Near Flood Stores, Kapileswarapuram,
East Godavari District - 533 509.

..... PETITIONER

AND

1 APSRTC, rep. by its the Divisional Manager, Kakinada, East Godavari District.
2 APSRTC, rep. by its the Regional Manager, Rajahmundry, East Godavari District.
3 S. Raju, S/o. Not Known, aged not known, E.No. 454689, Conductor, APSRTC, Ravulapalem Depot,
East Godavari District.
4 V. Ganesh, S/o. Not Known, aged not known, E.No. 600493, Conductor, APSRTC, Raulapalem Depot,
East Godavari District.
5 G.S. Rao, S/o. Not known, aged not known, E.No. 600510, Conductor, APSRTC, Ravulapalem Depot,
East Godavari District.
6 M.P. Rao, S/o. Not known, Aged not known, E.No. 150511, Conductor, APSRTC, Tuni Depot, E.G. District.
7 G.S. Narayana, S/o. Not known, aged not known, E.No. 150519, Conductor, APSRTC, Tuni Depot, E.G. District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order, Direction or a Writ one in the nature 'Mandamus' (I) the order dt: 09-12-2002 of the 1st respondent to the extent of postponing the de-casualization for a period of one year (II) the action of the respondents in not regularizing the services of

the petitioner, as illegal, arbitrary and (III) to treat the petitioner as an employee of 1991 batch of employees and having continuous service (IV) that the petitioner is entitled for de-casualization of service after completion of 240 days of service from the date of joining in service in the year 1991, and that by setting aside the order dt: 09.12.2002 of the 1st respondent to the extent of postponing the de-casualization for a period of one year consequently direct the respondent to regularize the service of the petitioner immediately from the date of initial appointment from the year 1991 with all service prospects and all financial benefits including arrears.

Counsel for the Petitioner:MR.A.SRINIVASA SARMA

Counsel for the Respondent Nos 1 and 2.: Mrs. B. G. Uma Devi

Counsel for Respondents 3 to 7 : None appeared

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a writ of Mandamus to declare the order

dated 9.12.2002 of the 1st respondent to the extent of postponing the de-casualization for a period of one year and not regularizing the services of the petitioner, as arbitrary and illegal with consequential direction to the respondents to regularize the services of the petitioner immediately from the date of initial appointment from the year 1991.

It is the case of the petitioner that he was engaged as a casual conductor in Andhra Pradesh State Road Transport Corporation in the month of August, 1991. While so, he fell sick and could not report for duties and the Depot Manager, APSRTC, Eleswaram, disengaged the petitioner w.e.f. 30.11.1992, illegally. Aggrieved by the same, he raised an industrial dispute, which was numbered as I.D.No.370 of 1995 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. Ultimately, the said I.D. was answered in favour of the petitioner. Thus, he was reinstated into service on 18.12.1998. While so, again a charge-sheet was issued on 10.7.2002, which reads as follows.

> "Even though he had collected an amount of Rs.19.50 towards requisite fare at the boarding point itself from a batch of 3 passengers he had issued them only two tickets Nos. 414/424612 and 613 of Rs.6.50 denominations each for their journey from Draksharama to Yanam ex-stages 3 to 7 and failed to issue the 3rd ticket."

However, after conducting a detailed enquiry into the matter and after following due procedure, the Depot Manger concerned passed order of removal from service on 16.8.2002. Aggrieved by the same, the petitioner filed an appeal before the appellate authority-1st respondent herein, who considered the appeal and passed orders on 9.12.2002 directing re-engagement of the petitioner and further postponement of de-casualization of the petitioner for one year.

It is the case of the petitioner that such a course of action was not open for the appellate-authority to direct re-engagement of the petitioner and postponement of

the de-casualization of the petitioner for one year. It is the case of the petitioner that, in fact, the appellate authority itself has examined the misconduct alleged against the petitioner and found that it was not a case of any lapse on the part of the petitioner, but it was more out of negligence rather than wilful mischief. Therefore, the benefit of doubt regarding the motive can be given to the petitioner-appellant. Thus, the appellate authority passed re-engagement order with some conditions by its order dated 9.12.2002. In pursuance of the said order, the petitioner has been re-engaged on 9.4.2003.

I have given my earnest consideration to the submissions made on either side and I am of the considered opinion that when once the appellate authority found that it was a small negligence, which is rather a wilful mischief on the part of the petitioner, no loss is caused to the Corporation and that postponement of de-casualization for a period of one year is, very harsh. Therefore, instead of remanding the matter for re-consideration, the order of the appellate authority is modified to the effect that the petitioner is entitled for re-engagement with continuity of service but without any back wages and attendant benefits.

With the above modifications, the writ petition is partly allowed to the extent indicated above. No order as to costs.

23.6.2005

CVM

To,

1 APSRTC, rep. by its the Divisional Manager, Kakinada, East Godavari District.
2 APSRTC, rep. by its the Regional Manager, Rajahmundry, East Godavari

3. 2 CCs to Mrs. B.G. Uma Devi, Standing Counsel for APSRTC, High Court buildings, Hyderabad (OUT).

4. 2 CD copies.